

COPIES OF THIS DOCUMENT

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)
)
Amendment of Service and Eligibility Rules) MB Docket No. 07-172
for FM Broadcast Translator Stations) RM -11338
)
)
To: The Commission)

FILED/ACCEPTED
JAN - 7 2008
Federal Communications Commission
Office of the Secretary

COMMENTS OF BROADCAST COMMUNICATIONS, INC.

Broadcast Communications, Inc. ("BCI"), by its attorney, pursuant to *Notice of Proposed Rule Making*, FCC 07-144 (released August 15, 2007), hereby submits its Comments in the above-captioned rule making proceeding. BCI supports the Commission proposal to permit AM stations to use FM translators. In support of its position, BCI submits the following:

BCI is the licensee of four AM stations: WANB, Waynesburg, Pennsylvania, WKFB, Jeannette, Pennsylvania, WKHB, Irwin, Pennsylvania and WCMD, Cumberland, Maryland. Three of BCI's AM stations are Class D stations and operate either daytime only or with severely limited nighttime power. Stations WANB and WKFB operate as daytime only stations and Station WKHB operates with 50 Watts at nighttime.¹

DISCUSSION

BCI supports the Commission's proposal to permit AM stations to use FM translator stations as a fill-in service within the service area of their daytime operating

¹ Station WKHB operates during the day at 5.5 kW. BCI is also the licensee of Stations WROG(FM), Cumberland, Maryland and WANB-FM, Waynesburg, Pennsylvania.

No. of Copies rec'd 044
List ABCDE

ORIGINAL

contours. The Commission's proposal would clearly serve the public interest. BCI is unaware of any adverse consequence which would be expected as a result of the rule changes. As the Commission itself has pointed out, the proposed rule changes would allow AM stations with limited or no nighttime power to overcome their nighttime coverage losses. Permitting AM stations to use FM translators would help to ensure the continued viability and economic survival of stations in the AM service by permitting those stations to better compete with other stations in their market. It would also increase service to the public by providing additional local programming options.

At present, AM listeners experience a significant reduction in local nighttime service. Certainly, it has been BCI's experience that present restrictions on pre-sunrise and post-sunset operations dramatically and adversely affect its ability to provide local programming to its listeners, particularly during winter months when it is unable to broadcast during the entirety of critical drive-time portions of the broadcast day. BCI's AM stations are often unable to cover local community events, such as high school sporting events, town meetings, school closings, election results, and traffic and local weather. Its stations likewise are presently unable to provide information to listeners during local emergency situations occurring between sunset and sunrise. The ability to disseminate that programming and information has been affected by the required reduction or elimination of power in the evening. Yet, the need to receive local information does not cease at sunset.

It can scarcely be contested that use of FM translators by AM stations will lead to an increase in the amount of local programming available at night to local residents. As noted, at present, three of BCI's AM stations must reduce or eliminate service to their

listeners at night. However, if the Commission adopts its proposed rules, BCI's AM stations will be able to expand coverage of local news and events. Adoption of the proposed rules will also contribute to a diversity of viewpoints available after sunset. BCI seeks to be able to provide the same level of local service to its listeners at night that it presently does throughout the day.

BCI believes that the Commission's rules should give a priority to daytime-only AM stations and AM stations with limited nighttime power which seek to use FM translators to provide a fill-in service. BCI supports phasing in implementation of the Commission's new rules, in this case, a one-year initial implementation period for Class D stations with limited or no nighttime service. The Commission's prior experience with new filing procedures has shown that opening up a window or removing filing restrictions will result in an avalanche of applications being filed. This typically results in an inability by the Commission to process those applications which have been filed as well as other applications filed contemporaneously in other services. The Commission has only a fixed amount of human resources and, if substantial time is spent processing those hundreds of new applications that would be expected if the new rules are made effective at once for all stations, the result can only be chaos. The most obvious proof of this is that the Commission is still processing FM translator applications filed in a March, 2003 window.

Therefore, BCI would restrict the rule changes adopted in this proceeding for an initial one year period to those Class D AM stations with limited or no nighttime service. It is these stations and their listeners who have the greatest need for the new rules. BCI would also limit the amount of translator applications and/or stations for any one AM

station to ten. This would also result in fewer applications being filed, thereby reducing Commission processing time.

BCI further advocates opening an FM translator filing window only to AM stations which currently have limited or no nighttime service. Alternatively, in the event the Commission allows other entities to file translator applications, it should, nevertheless, grant a preference in any FM translator filing window to those AM stations with limited or no nighttime service who have proposed to provide a fill-in service of their commonly owned primary stations. It is these AM stations and their listeners who have the greatest need for local service. Such stations should receive priority over those applications filed by FM broadcasters proposing other than fill-in service. AM daytimer stations should be able to apply without fear that their applications will be caught up in mutually-exclusivity with other competing applications which are not providing local service.

The Commission should resist the temptation to limit an AM licensee's ability to use FM translators as a fill-in service depending on whether it has ownership of an FM station in the same market as its AM station. The public's need for additional local programming on the AM band is not contingent on whether an FM station in the same market is licensed to an AM daytime licensee or another party. In fact, it is much more likely that a daytime AM station will be owned by an individual or by a small group owner as compared to the type of conglomerates that often own FM or television stations. However, even if this were not true, the public interest will be advanced by providing more local programming options, and that objective is not determined by who is the licensee of an FM same market station.

BCI also believes that Section 74.1232(e) of the Commission's translator rules should be applied the same way to FM and AM stations when it comes to prohibiting a translator from receiving financial support from a primary station where the translator's coverage contour extends beyond the protected contour of the station. This rule does not apply to fill-in translators when it comes to FM stations and should similarly not apply to AM stations, thereby permitting AM stations to broker time over FM translators which provide a fill-in service. The licensee of an AM station meeting the fill-in contour requirement should be allowed to either own an FM translator or to financially support that translator through a time brokerage agreement.

BCI supports the imposition of proposed technical restrictions permitting FM translators to retransmit AM programming as a fill-in service as long as no portion of the 60 dBu contour of the FM translator exceeds the lesser of the 2 mV/m daytime contour of the AM station or the 25-mile radius of the AM transmitter site. However, it is the nature of the AM service that there are many AM stations with very irregular shaped contours, some with deep and narrow nulls. For that reason, it may be impractical or even impossible to replicate the shape of an AM station's 2 mV/m contour with a translator at an available tower site suitable for an FM translator. Therefore, the Commission should adopt a rule that allows a *de minimus* portion of an FM translator's 60 dBu contour to extend outside the AM station's 2 mV/m daytime contour. No more than 20% of the translator 60 dBu contour should be allowed outside of the AM station daytime contour.

BCI also requests that the Commission amend its rules to protect FM translator stations which provide a fill-in service to AM stations from being displaced by subsequently-filed LPFM applications. LPFM stations provide local service, but no more

local service then AM stations already do. As such, an FM translator station that provides a fill-in service to an AM station should not face displacement by a subsequently-filed FM translator or LPFM application.

CONCLUSION

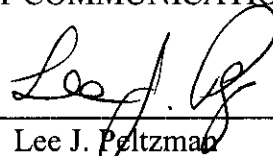
Adoption of the proposed rules will have a clearly beneficial effect on AM broadcasters who are presently required to reduce or even eliminate service at night. Those stations will be better able to meet the local needs of their service area. Adoption of the proposed rules will help to fulfill the Commission's core values of localism and diversity. Since 80 percent of radio listening is done on the FM band, AM stations should be able to improve their stations and better serve their service areas through the use of FM translators.

Accordingly, the foregoing premises considered, BCI respectfully urges that the Commission adopt the proposals contained in its *Notice of Proposed Rulemaking*, as modified in these Comments.

Respectfully submitted,

BROADCAST COMMUNICATIONS, INC.

By:



Lee J. Peltzman
Its Attorney

Date: January 7, 2008

Shainis & Peltzman, Chartered
1850 M Street, N.W., Suite 240
Washington, D.C. 20036
(202) 293-0011